



Docket Clerk
Marketing Order Administration Branch
Fruit and Vegetable Programs
AMS, USDA
1400 Independence Avenue, SW
STOP 0237
Washington, DC 20250-0237

FAX (202) 720-8938
E-MAIL moab.docketclerk@usda.gov
INTERNET <http://www.regulations.gov>

RE: Docket No. FV03-925-1PR
Federal Register Vol.70, No. 100, Page 30001
Grapes Grown in a Designated Area of Southeastern California and Imported
Table Grapes; Proposed Change in Regulatory Period
COMMENTS IN OPPOSITION TO PROPOSED CHANGE

Dear Docket Clerk:

EXPORTADORA BEN DAVID S.A. opposes the above referenced change in the effective date of Table Grape Marketing Order 925 and the companion Table Grape Import Regulation 4 that will further restrict table grapes supplied from Chile. EXPORTADORA BEN DAVID S.A. is in the business of exporting Chilean agricultural commodities, and ships approximately 211.682 of fresh table grapes to the U.S. during the months of December to April.

EXPORTADORA BEN DAVID S.A. concurs with, and incorporates herein by reference, the detailed comments and supporting data submitted by ASOEX, the Chilean Exporters Association. Specifically, EXPORTADORA BEN DAVID S.A. urges the agency to reject the proposed change in the regulatory period:

1. The Proposed Rule imposes marketing order standards on Chilean supplies when no domestic varieties are available, and therefore constitutes a non-tariff barrier contrary to the terms of WTO Agreements and the U.S.-Chile Free Trade Agreement.
2. The Proposed Rule assesses inspection fees starting April 1 when no domestic supplies are being so charged, and thereby violates Article III and Article VIII of GATT 1994.



The change in the beginning effective date of Marketing Order 925 and Table Grape Import Regulation 4 from April 20 to April 1 will have a direct negative impact on our business. Exportadora Ben David S.A. ships 126.754 cases of fresh table grapes to the U.S. from April 1 to April 20. If the Proposed Rule should be adopted, the estimated value of the table grapes to be excluded from shipment is US\$ 1.133.534.-

4. The Proposed Rule does not contain any evidence of circumvention by Chilean table grapes sufficient to warrant the proposed change.
5. The change in date from April 20 to April 1 will create an artificial shortage of table grapes since there is no other commercially significant and reliable supply from any source other than Chile.
6. The Chilean grapes supplied from April 1 to the earliest commercially significant supplies of grapes from Coachella Valley in California meet marketing specifications from retail chains that are more stringent in some respects than the marketing order requirements.
7. The proposed change cannot be validly based on a 20 year-old survey of cold storage practices.
8. The proposed change can not be justified under the criteria established by the AMAA for a change in the beginning effective date of Marketing Order 925 or the companion Table Grape Import Regulation 4 in view of the record prices received by Coachella Valley growers in the last two seasons.

Respectfully submitted,

EXPORTADORA BEN DAVID S.A.